Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services Providers	)	CC Docket 95-185

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC COMMUNICATIONS INC.

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SUMMARY

SBC replies to the comments filed in response to the NPRM and in opposition to the Commission's tentative conclusions, including the tentative conclusion that zero-rate, "bill and keep" interconnection arrangements should be imposed upon LEC/CMRS interconnection.

This Docket was initiated before enactment of The Telecommunications Act of 1996 (the "Telecommunications Act"). As numerous parties point out, the provisions of the Telecommunications Act have superseded everything this Docket encompasses. The Commission's proposed "interim" approach is unsustainable under the terms of the Telecommunications Act, is unsupported by the available facts, is economically unsound, and is simply bad policy.

Moreover, the "advantages" the Commission cites for its proposed bill and keep policy are not real. The interconnection compensation principle the Commission has embraced is practically and economically unsound and conflicts with its pro-competitive, pro-consumer policy goals. The Commission's tentative conclusions are based upon an inaccurate portrayal of the facts of LEC/CMRS interconnection. Although the Commission has been led to believe that CMRS providers are captive to arbitrary LEC interconnection terms, many options exist which CMRS providers may use to increase their power to negotiate and to reduce the cost of interconnection. Some parties would also have the Commission take comfort in its tentative conclusions based upon several states' adoption of bill and keep in certain circumstances. These parties have misled the Commission on the degree of acceptance of bill and keep interconnection, however. Simply put, no state jurisdiction has adopted bill and keep interconnection rates in circumstances such as exist in LEC/CMRS interconnection.

As virtually all parties support, the Commission must undertake the many additional proceedings necessary for the implementation of the Telecommunications Act. Because this docket is flawed in its legal and factual foundations, and the Commission is without jurisdiction to adopt its tentative conclusions, the Commission should dismiss it. While the Commission's ability to address interconnection remains subject to the failure of a negotiation process undertaken pursuant Sections 251 and 252 of the Telecommunications Act and the specific strictures of those provisions, the Commission could chose to suspend this Docket. In any event, the Commission cannot mandate its tentative conclusions and should redirect its energies to the many proceedings necessary to implement the Telecommunications Act.

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SBC COMMUNICATIONS INC. ("SBC"), by its attorneys and on behalf of its subsidiaries, including Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Mobile Systems, Inc. ("SBMS"), files these Comments in reply to the responses of the parties to the referenced docket.[1]

I. INTRODUCTION

Many parties support the Commission's "long-term policy" of implementing a price structure for functionally equivalent services that makes them available to all consumers at the same prices, unless there are cost differences or policy considerations that justify different rates.[2] Many parties disagree, however, with the Commission's tentative conclusion that it should impose an "interim" "bill and keep" interconnection rate policy.

This Docket was initiated before enactment of The Telecommunications Act of

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[1]The referenced docket was initiated pursuant to the Commission's release of a Notice of Proposed Rulemaking on January 11, 1996 (the "NPRM").

[2] NPRM at ¶4.

1996 (the "Telecommunications Act").[3] As numerous parties point out, the provisions of the Telecommunications Act have affected everything encompassed by this Docket. As was pointed out by SBC and others, the Commission's proposed "interim" approach is inconsistent with the terms of the Telecommunications Act, is unsupported by the facts, and is economically unsound. First, as pointed out by numerous parties (and incorrectly disputed by some), this pre-Telecommunications Act proceeding has been superseded by the enactment of legislation. The Commission cannot lawfully mandate its tentative conclusions. Second, the "advantages" the Commission cites for its proposed policy are not real. The bill and keep structure the Commission has tentatively embraced is practically and economically unsound and conflicts with its pro-competitive, pro-consumer policy goals. Moreover, the Commission's tentative conclusions are based upon an inaccurate perception of LEC/CMRS interconnection. Third, some parties would have the Commission take comfort in its tentative conclusions based upon the decisions of several state jurisdictions adopting bill and keep in certain circumstances; these parties have misled the Commission on both the degree of, and reasons for, acceptance of bill and keep interconnection in a few state commissions.

As virtually all parties support, the Commission must undertake the many additional proceedings necessary for the implementation of the Telecommunications Act. Because this docket is flawed in its legal and factual foundations, the Commission should dismiss it. However, since the parties may be expected to enter into robust negotiations based on the

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[3] For purposes of consistency, all references to what is or will become Title 47 of the United States Code, either as it exists under The Communications Act of 1934 (the "Communications Act"), as amended (47 U.S.C. §§151, et seq.), or under The Telecommunications Act of 1996 (Pub. L. No.104-104; 110 Stat. 56 (1996)), will be referenced by their codified section numbers (e.g., "Section 151" or "Section 252").

Telecommunications Act, the Commission need not spend its time at this juncture analyzing and issuing findings and conclusions based on the facts and the law presented in the Comments and Reply Comments in this proceeding. While SBC submits that the Commission will have no more lawful jurisdiction to mandate a form or a rate for interconnection at a later date than it has today, it could choose to suspend this Docket until at least the end of 1996. By suspending this proceeding, the Commission will be permitted to observe the progress of LEC/CMRS interconnection negotiations. If the grievances of the CMRS providers which make up the basis of the NPRM, whether or not grounded in fact, are not moot, then the Commission may at that time analyze the arguments concerning its jurisdiction as well as the facts presented in this proceeding and determine what action, if any, to take consistent with the Telecommunications Act. In any event, the Commission cannot mandate its tentative conclusions and should redirect its energies to the many proceedings necessary to implement the Telecommunications Act.

II. DISCUSSION

A. THE TELECOMMUNICATIONS ACT HAS AFFECTED THIS PROCEEDING; THE LEGAL PREMISES UNDER WHICH THE COMMISSION ISSUED THE NPRM ARE NO LONGER VALID

Sections 251 and 252 of the Telecommunications Act create a "new model for interconnection."[4] The distinguishing principle of the new model is that interconnection arrangements between telecommunications carriers are to be negotiated and determined by agreement, subject (where necessary) to arbitration by state commissions. The Commission's role is largely limited to interpreting the broad parameters of the Telecommunications Act and resolving specific disputes where the States fail to do so within the time frames prescribed by the

[4]Telecommunications Act Conference Report at 121.

Act. The Commission can adopt general guidelines pursuant to the Act's requirements, but it may not impose additional obligations; in particular, the Commission cannot impose a substitute for negotiations or mandate a resolution.

Within the Section 251/252 structure, the Commission cannot mandate bill and keep. Any attempt to take such action would be fundamentally inconsistent with the requirement in the Telecommunications Act that, absent voluntary agreements to the contrary, interconnecting carriers are entitled to a recovery of costs. The pricing standards in Section 252 absolutely preclude mandated bill and keep. Section 251(c)(2) requires incumbent LECs to provide interconnection with their networks at any technically feasible point "for the transmission and routing of telephone exchange service and exchange access," a requirement that necessarily includes the traffic originated by CMRS providers. The pricing standard relevant to Section 251(c)(2) interconnection requirements is found in Section 252(d)(1), which require rates "based on the cost . . . of providing the interconnection . . . and may include a reasonable profit."[5] Under this standard, the regulator must, at a minimum, permit costs to be recouped. Mandated bill and keep is irreconcilable with this statutory requirement.

Some CMRS providers have argued that Section 332(c)(3)(A) of the Communications Act of 1934, as amended, gives the Commission exclusive jurisdiction over interconnection compensation agreements between CMRS providers and LECs.[6] Those parties argue that the Commission thus has the authority to order bill and keep between a CMRS provider and a LEC even though the Commission clearly could not order such a result in

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[5]Id.

[6]See, e.g., Airtouch at 4; AT&T at 28; Cellular One at 2; Nextel at 16.

interconnection arrangements between LECs. Section 332(c)(3)(A), however, merely limits the power of the States "to regulate the entry of or the rates charged by any commercial mobile service . . .."[7] The words "the rates charged by" have been interpreted by the Commission to refer to the amount charged by CMRS providers to their subscribers, not to LEC/CMRS interconnection arrangements.[8] In order to read "exclusive jurisdiction" into Section 332(c)(3)(A), words would have to be found that simply are not in the statute and interpretations would have to be adopted that have been rejected by the Commission.[9] Section 332(c)(3)(A) neither deprives the States of jurisdiction over interconnection compensation agreements between LECS and CMRS providers nor takes such agreements out of the "new model" established by the Telecommunications Act.

B. INEFFICIENT INTERCONNECTION, INCLUDING BILL AND KEEP, IS AN UNSOUND POLICY WHICH HAS NOT GAINED ACCEPTANCE IN CIRCUMSTANCES SUCH AS LEC/CMRS

1. The Alleged Advantages of Bill and Keep Are Illusory

The NPRM sets forth three supposed "advantages" to the adoption of bill and keep:

> Bill and keep arrangements appear to have a number of advantages, especially as an interim solution. First, such arrangements are administratively simple and would require the development of no new billing or accounting systems. Second, the bill and keep

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[7] Id.

[8] See Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1480 (1994)("Second Report and Order") ("revised Section 332 does not extend the Commission's jurisdiction to the regulation of local CMRS rates."). Instead, the Commission has opined that it could preemptively deregulate, not regulate, intrastate CMRS rates.

[9] Id.

> approach prevents incumbent LECs that possess market power from charging excessively high interconnection rates. Third, according to proponents, a bill and keep approach is economically efficient if either of two conditions are met: (1) traffic is balanced in each direction, or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate.[10]

However, as pointed out by SBC in its comments[11] and supported by numerous respondents, bill and keep is an unsound policy.[12]

a. The First Supposed "Advantage," Administrative Simplicity, Is Insubstantial

As reasoned by Pacific Bell and others, the first "advantage" of bill and keep, administrative simplicity, is insubstantial.[13] CMRS providers contend that cost savings will result through the adoption of bill and keep because billing and tracking systems need not be developed.[14] CTIA also suggests that bill and keep will eliminate the need for LEC tariff filings.[15]

Regardless of the Commission's decision, the billing and collection systems of one carrier or another must be changed. If bill and keep is adopted, and LECs are to recover their lost revenues and the increased costs of inefficient interconnection from their own customers, as the

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[10]Id. at para. 61 (citing CTIA ex parte).

[11]SBC Comments at 9-12.

[12]See Ameritech Comments at 8, 9; Bell Atlantic at 7; Pacific Bell at 11-14; Alltel at 4; GTE at 13-15; PageNet at 13; BellSouth at 18-21; US West at viii, 37; OPASTCO at 2, 5; USTA at 10, 11; New York Department of Public Service at 4-8; Staurulakis at 3-5.

[13]See also USTA Comments at 21; NYNEX at 26; Pacific Bell at 52.

[14]See e.g., CTIA Comments at 11; Vanguard Comments at 17.

[15]CTIA Comments at 11.

Commission's commenters have evidently suggested,[16] they will be required to make changes in their recording and billing systems and in their tariffs to permit charging their own customers.[17] To the extent that these changes result in the imposition of additional end-user charges, no administrative simplicity will accrue to LECs or to the federal or state commissions that may be required to approve the charges.[18]

CMRS providers argue that they will benefit from bill and keep's "administrative simplicity." However, CMRS providers already record every minute of use generated by their customers because of the measured nature of their service. Additionally, many CMRS providers currently pass through and assess to their customers a LEC "interconnection charge" on a per minute basis; this interconnection charge pass-through is typically reflected on a per call basis as a line item on the CMRS customer's bill. Only minimal modifications to CMRS providers' billing systems, therefore, would be required to implement a cost-based interconnection charge because the only change required is that of billing to LECs the minutes of use that terminate on CMRS systems. If there is any material cost to CMRS providers resulting from the implementation of such a system, it would easily be recouped through the collection of interconnection charges from LECs. Except for the interconnection charges that would not be paid to LECs under bill and keep, the potential savings to CMRS providers and their customers--although not quantified by

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[16] See NPRM at ¶ 50.

[17] See also USTA Comments at 21-22.

[18] SBC and many other commenters contend that the Commission may not mandate bill and keep. However, to the extent that it does so, the Commission will unquestionably impose higher costs upon, and exact a revenue reduction from, LECs. If bill and keep is imposed, a mechanism must be put in place that offsets the costs and replaces the lost revenues.

any commenter--are unsubstantiated.

CMRS proponents of bill and keep's alleged simplicity also omit to mention that most of the cost savings will accrue to CMRS providers in that they produce 80% of the traffic which would otherwise be measured and billed in the form of interconnection charges. The positive impact of the alleged "administrative efficiency" that bill and keep might bring is, therefore, as one-sided as the flow of traffic.[19]

b. The Second "Advantage," Curbing Alleged LEC Market Power, is Based Upon a Fallacy

The alleged second "advantage" is that bill and keep could serve to curb LEC market power. As set forth in SBC's Comments, the NPRM is evidently premised upon the belief that the negotiation process has not served or will not serve the public interest.[20] In this context, the comments of many CMRS providers and their associations perpetuate the myth underlying the NPRM that wireless carriers are captives of LEC networks. These comments are simply incorrect. The NPRM and the arguments of the CMRS industry fail to recognize that LEC market power has already been diminished by the myriad opportunities for alternative interconnection that exist.

As pointed out by SBC[21] and Ameritech,[22] among others,[23] in both the pre- and post- Telecommunications Act environments numerous interconnection arrangements are and

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[19] See Pacific Bell Comments at 29; SBC at 12; New York Department of Public Service at 8; Home Telephone at 2; GTE at 20.

[20] SBC Comments at 14; NPRM at 43.

[21] See SBC Comments at 17-20.

[22] See Ameritech Comments at Attachment A.

[23] See Pacific Bell at 40-44; 53-54.

have been available to CMRS providers. CMRS providers have had available technical forms and configurations of interconnection that can reduce their costs of service.[24] Alternative access providers have been available to sell local interconnection. Even in the pre-Telecommunications Act environment, CMRS providers have had available various forms of reciprocal compensation through effective negotiation. For those that negotiate, many arrangements have been and are available with different technical attributes, through different access providers, and with varying compensation arrangements.

Certain CMRS providers, such as APC, Bell Atlantic NYNEX Mobile ("BANM"), and others, supply thin anecdotal "evidence" that some LECs have exercised their "market power" to force CMRS providers into unfavorable arrangements. Other CMRS providers, including Airtouch, AT&T, Florida Cellular, GO Communications, Nextel, and Omnipoint, although complaining in their comments of an inability to obtain acceptable interconnection arrangements, do not cite specific examples of the exercise of LEC "market power" against them. A review of the comments reveals less in the way of discrimination and more in the way of a lack of total success of CMRS providers to achieve their goals in negotiation and interconnection efforts.

Contrary to the unsubstantiated anecdotes of other CMRS providers responding to the NPRM, SBC's wireless subsidiary has been able to obtain interconnection arrangements with LECs on reasonable terms.[25] As set forth in SBC's Comments, these arrangements have been

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[24] Ameritech Comments at Attachment A.

[25] As set forth in SBC's Comments, SBMS has more customers and potential customers outside of its affiliated LEC's territory than within, and therefore, has extensive experience in dealing with unaffiliated incumbent LECs in interconnection negotiations.

made possible because CMRS providers have numerous alternatives. In all markets, CMRS providers can use their own extensive wireless networks to route traffic to the least costly point of interconnection. In nearly all markets, multiple local interconnection points are available, thereby permitting CMRS providers to shop for the most efficient point or provider of access. Because alternatives exist, wireless carriers have enormous bargaining power in negotiating with LECs. As more and more alternative LECs compete for access customers, the bargaining power of CMRS providers as high volume purchasers of interconnection and access services will continue to grow.

In addition, CMRS providers' legal and regulatory protections assure them of an ability to obtain reasonable interconnection. Congress and the Commission have sufficiently empowered CMRS providers through the enactment of laws and through regulatory action to prevent LECs from negotiating interconnection agreements with individual CMRS providers on terms that are insufficient or significantly less favorable than the terms provided to any other carrier.[26] As set forth in SBC's Comments, federal law already ensures wireless carriers the opportunity to obtain access to local exchange networks, to have CMRS calls to landline networks completed, and to have landline originated calls terminated on their wireless networks.[27]

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[26] See 47 U.S.C. §§201, 202, 332(c)(1)(B). See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) ("CMRS Second Report"). In general, the obligation to interconnect flows from the statutory common carrier obligation of LECs "to establish physical connections with other carriers." See also The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion & Order, 59 RR 2d 1275, 1283 (App. B) (1986) ("Interconnection Order and Policy Statement"); clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987), aff'd on recon., 4 FCC Rcd 2369 (1989).

[27] Id. See also Sections 251 and 252.

Nevertheless, APC, for instance, cites an "off-the-shelf" interconnection arrangement it accepted with Bell Atlantic in the Washington-Baltimore area, evidently without even exploring the alternatives available to it. Based upon the terms it accepted in this agreement, APC contends that it has been mistreated.[28] Examples listed by BANM, [29] Comcast,[30] and Vanguard Cellular are less specific. Each example has a common attribute, however: each is without evidence of vigorous bargaining by the CMRS provider.[31]

As SBC demonstrated in its Comments, alternatives exist in Washington-Baltimore. APC's failure to take advantage of them is hardly the fault of Bell Atlantic or a basis upon which to assert an allegation of discrimination. The same is very likely true for the examples listed by BANM, Comcast, and Vanguard. SBC also operates in some of the same markets as BANM and Comcast, yet has a distinctly different experience in accomplishing interconnection.[32] Through negotiations, SBMS has been able to obtain interconnection with the incumbent LECs in New York, Illinois, Indiana, Massachusetts, Virginia, Maryland, and Washington, D.C. In many of these areas, including Rochester, Buffalo, Boston, and soon, Illinois, SBMS has obtained reciprocal compensation. In these and other areas, SBC has also obtained satisfactory arrangements with alternative providers.[33] As set forth above, these are many of the same areas

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[28] See APC Comments at 3-4,12.

[29] See BANM Comments at 4-6.

[30] See Comcast Comments at 1-2.

[31] See Vanguard Comments at 6-9.

[32] See SBC Comments at 13-14.

[33] See SBC comments at 17-20.

about which other CMRS providers complain of being unable to obtain satisfactory arrangements.

Based at a minimum upon SBMS's experience, the evidence shows that notwithstanding the allegations of some CMRS providers, negotiation works. There has been no evidence presented that any unlawful exercise of market power has occurred or that recourse for any such exercise has not been available. The Commission's tentative conclusions regarding LEC/CMRS interconnection, therefore, are based upon an incorrect assessment of the current interconnection market. CMRS providers that cry "LEC interconnection market power" would be well advised to take a hard look at negotiating better agreements. To the extent a CMRS provider has failed to negotiate what it needs, at least part of the blame lies at the feet of that provider.

c. The Third Alleged "Advantage," Economic Efficiency, Is Non-Existent Because Improper Pricing Signals Resulting From Zero-Rated Interconnection Cause Inefficiency

The Commission's alleged third "advantage"--that bill and keep may be "economically efficient" in the context of LEC/CMRS interconnection-- fails to recognize the economic reality of LEC/CMRS interconnection and the disincentives bill and keep provides to the introduction of new competition. Even proponents of bill and keep recognize that unique circumstances must exist for zero-rate interconnection to produce economic efficiency. Even under the suspect economic framework set forth in the NPRM, bill and keep is potentially efficient only if "(1) traffic is balanced in each direction, or (2) actual interconnection costs are so low that there is little difference between a cost-based rate and a zero rate."[34] Almost all proponents of bill and keep concede that traffic is not balanced in the case of LEC/CMRS

[34] NPRM, at ¶ 61.

interconnection.[35] Approximately 80 percent of the wireless traffic occurring today is mobile to land-line calls.[36] However, the proponents of bill and keep contend that condition (2) of Brock's economic efficiency test is satisfied in the case of LEC/CMRS interconnection because, they contend, the average incremental cost of local termination on LEC networks is approximately 0.2 cents per minute.[37] As was pointed out by Pacific Bell and others, however, this cost figure is grossly understated. Switched access costs are in the range of 1.0 cent per minute, while peak costs for termination are much higher.[38] In addition, LRIC estimates do not include shared and common costs, a portion of which LECs must have the opportunity to recover.[39]

Based upon actual terminating costs, bill and keep does not meet the test set forth in the NPRM for economic efficiency; even if it did, bill and keep is bereft of economic justification in the LEC/CMRS context and fails to support the Commission's policy goals. In its Comments, CTIA acknowledges that the owners of incumbent networks have incurred significant

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[35]Id. Only APC contends that traffic is "roughly" balanced. In its Comments, APC contends that the traffic flow is only 58% wireless to wireline, and 42% wireline to wireless. The experience APC claims is not typical, however, as no other commenter to SBC's knowledge argues that traffic is balanced or will be balanced in the near future. See APC Comments at 9.

[36]See, e.g., Pacific Bell Comments at 29; USTA Comments, Attachment A, at 5; Ameritech Comments at 8-9; APC disputes this fact for its particular service.

[37]Id.

[38]USTA comments at 24 and Attachment at 9-10 (switched access costs $0.01 to $0.013 per minute) (Calvin S. Monson and Jeffrey H. Rohlfs, The $20 Billion Impact of Local Competition in Telecommunications (Bethesda, Md.: Strategic Policy Research for United States Telephone Association, 1993); Michael J. Marcus and Thomas C. Spavins, "The Impact of Technical Change on the Structure of the Local Exchange and the Pricing of Exchange Access: An Interim Assessment," presented at Telecommunications Policy Research Conference, Solomons Island, Maryland, October 3, 1993).

[39]Pacific Bell Comments at 55; See also USTA Comments at 22-24.

costs in constructing their networks and will incur significant additional costs in growing those networks in stating:

> One of the most valuable resources existing within the United States today is our nationwide, ubiquitous, advanced telecommunications infrastructure. In furtherance of longstanding federal and state policy, our nation's telephone system is engineered to an extraordinarily high standard of quality and has an extremely high market penetration rate. This means that there is almost no call blockage within the nationwide telephone system, even at peak calling periods. In other words, Americans have the ability to call anytime, anywhere in the United States and the call will go through on the first try.[40]

CTIA follows this unimpeachable statement on the value of the enormous LEC investment with comments advocating free use of the investment.[41] As set forth in SBC's Comments, the Commission cannot disconnect compensation for the use of a network from the cost of developing it. The foundation upon which all interconnection and compensation issues must be based is that owners of networks are entitled to be compensated for the services provided by means of those networks.[42]

CTIA and others admit that inefficient pricing signals are sent by inappropriate interconnection pricing and arrangements.[43] These Comments are consistent with CTIA's Comments in Docket 94-54 and with SBC and others' Comments in this Docket that inefficient interconnection is economically unsound.[44] As pointed out by numerous parties, bill and keep is

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[40]CTIA Comments at 39.

[41]Id. at 40.

[42]See also Staurulakis Comments at 5.

[43]See CTIA Comments at 46.

[44]See CTIA Comments and Reply Comments in Docket 94-54 (as cited in SBC Comments). See also Pacific Bell Comments at 54-57 and Attachment B (Hausman Statement);

an inefficient arrangement that fails to provide the appropriate economic signals, creates disincentives to investment, and leads to inefficient interconnection. [45] Bill and keep promotes "free riding," in which one carrier avoids making new investments and simply takes advantage of costs incurred by others.[46] There is literally no reward for building the backbone of a network if "free riding" is acceptable.[47] Bill and keep discourages optimal levels of investment and the innovation of new services and technologies. Bill and keep produces no incentive to build infrastructure that would produce lower overall costs when both interconnecting firms are considered. Likewise, bill and keep also does not support the introduction of new, competitive networks. Infrastructure investment is not optimized and the innovation of new, more efficient services and technologies is not encouraged.

Bill and keep also sends incorrect pricing signals among the available forms of interconnection.[48] In making all forms of interconnection "free," bill and keep does not lead to a-minute-is-a-minute pricing, but requires that services be "priced" without reference to their costs. While LECs typically have been required to offer choices of interconnection (i.e., Type 1 or

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USTA Comments at 24-25; Ameritech Comments at 23.

[45] See Ameritech Comments, Attachment B ; Kenneth Gordon, providing a statement in behalf of Ameritech, supports the idea that economically efficient interconnection policies are necessary to the development of competition.

[46] See also testimony of Dr. Jerry A. Hausman, attached to SBC's Comments as Attachment A. Hausman Direct Testimony, at 11; Hausman Rebuttal Testimony at 11.

[47] See Id. at ¶¶ 18-19.

[48] See SBC Comments, Hausman Rebuttal Testimony, at 7-11.

Type 2A, and Type 2B),[49] with bill and keep the CMRS provider has no incentive to make the least cost and most efficient choice. LECs, however, are given the incentive to reduce the cost of all options by removing features. The originating carrier has no incentive to construct its own network to the most economically efficient extent. In choosing its least-cost configuration, bill and keep permits the originating carrier to impose unnecessary and inefficient costs on the network to which the traffic is terminated.[50] Neither provider is incented to do anything but reduce its cost and cut its losses.

Bill and keep would also place virtually all of the burden of terminating traffic on the incumbent wireline provider.[51] Without economically efficient interconnection charges, the business of terminating CMRS access will default to LECs. Competitive local service providers either will not offer the service or will offer it in an unattractive manner to minimize the loss that would accrue because of the uncompensated use of their networks.

Bill and keep also exacerbates the differences between telecommunications services by creating additional arbitrage opportunities. If a carrier must pay for terminating access from a wireline network but not from a wireless network, under bill and keep carriers have a great incentive to attempt to classify every call as wireless to avoid paying access or

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[49]See generally The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, aff'g Interconnection Order, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and systems designs). Cf. CMRS Second Report, 9 FCC Rcd at 1498.

[50]See e.g., NYNEX Comments at 28, and Exhibit A at 7-12; 22; Ameritech Comments at 8 and Attachment B.

[51]See Pacific Bell Comments at 12; Bell Atlantic at 7; USTA at 24; New York Department of Public Service at 8; Cincinnati Bell at 5.

interconnection charges.[52]

Ultimately, bill and keep leads to wasted resources and a smaller variety of choices.[53]

2. State Commissions Have Not Adopted Bill and Keep In Circumstances Similar to Those That Exist in LEC/CMRS Interconnection

In its Comments and in its, ex partes, CTIA attempts to persuade the Commission that state commissions think that bill and keep is appropriate for local interconnection. This assertion is misleading. Contrary to the statements of CTIA,[54] it is only in the context of competitive landline interconnection--where it has been argued in the absence of empirical evidence that there would be an equal flow of traffic--that bill and keep has sometimes been ordered.[55] As set forth in SBC's Comments, in limited circumstances a negotiated bill and keep arrangement could make sense. Where traffic flows are equal, and proposed interconnection rates are equal, there is no reason for two companies simply to trade equivalent checks. However, traffic in the LEC/CMRS context is decidedly unbalanced and the cost burdens are likewise skewed. No state commission has ordered bill and keep--even on an interim basis--in circumstances such as exist in the LEC/CMRS interconnection context.

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[52]Pacific Bell Comments, Hausman Statement at ¶¶ 20-23.

[53]See Pacific Bell Comments at 13,15 (citing Hausman Statement, paras. 16-17, attached as Exhibit B).

[54]See also Comcast Comments at 12, 17 and n. 25.

[55]See NYNEX Comments, Exhibit A at 22-24.

C. INTERCONNECTION CHARGES ARE NOT A BARRIER TO CMRS COMPETITION TO LEC SERVICE

APC contends directly, and other commenters allude to the idea, that interconnection rates are a barrier to wireless competition to the landline network.[56] This argument is erroneous. At worst, interconnection charges average $.03 per minute of use,[57] and these charges are frequently passed through directly to cellular customers.[58] Retail cellular rates average $.38 per minute.[59] In SBMS's experience, the percentage of total operating costs represented by interconnection charges ranges from 5.5 to 7 percent. Accordingly, interconnection costs are but a small portion of the overall cost of providing CMRS service. Even if all of the tentatively concluded reduction in interconnection charges was passed through to customers, the resulting rates would hardly be price competitive with landline measured rates. [60] Where landline flat-rated service is in place, CMRS is still less competitive.

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[56]APC Comments at 6.

[57]Cox Enterprises at 13.

[58]See supra at 7.

[59]See USTA Comments at iv.

[60]LEC rates for local measured service, although not ubiquitously used given that many LECs offer local service on a flat-rated basis only, seldom exceed $.05 per minute to the end user. See, e.g., Ameritech's local measured rates for the Chicago area of $.031 to $.052 per minute, with toll rates not exceeding $.12 for the first minute.

D. ALTERNATIVE, ECONOMICALLY SOUND, PRINCIPLES FOR INTERCONNECTION NEGOTIATIONS SHOULD BE RECOGNIZED, AND THE REGULATORY TASK LIST SHOULD BE TAKEN UP WITH ALL DUE SPEED

As was demonstrated by SBC in its Comments, the status of LEC/CMRS interconnection about which numerous CMRS providers complain is non-existent. "Bill and keep" is a "non-solution" for "a non-problem."[61] It does not advance the industry toward the Commission's stated goal of a-minute-is-a-minute pricing.[62] Instead, the bill and keep proposal makes more difficult the achievement of that ultimate structure by suggesting the implementation of an economically unsound system not supported by any public policy to replace the existing interconnection structure that at least has the historical virtue of supporting universal service.

As supported by numerous parties, the most economically rational method of intercompany compensation for traffic termination is to settle on the basis of a per minute charge. Interconnection rates should be differentiated on a consistent basis, depending upon where interconnection occurs and the costs for interconnection.

LECs and CMRS providers are required under the Telecommunications Act to implement interconnection arrangements through negotiations. Under the terms of the Telecommunications Act, the Commission should not attempt to impose any of the terms or conditions of interconnection among telecommunications carriers. Negotiations must be permitted to proceed.

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[61] See e.g., Ameritech Comments at 4.

[62] Pacific Bell's discussion of the Commission's policy goals in comparison to the effects of bill and keep is instructive. See Pacific Bell's Comments at 11-15.

As SBC has proposed in this and other contexts, the Commission must, however, address a series of important issues to implement the policies of the Telecommunications Act. These include:

- The elimination of implicit mechanisms for the support of universal service and carrier of last resort obligations and their replacement with explicit, competitively neutral mechanisms.
- The institution of targeted universal service support.
- The establishment of alternative, competitively-neutral methods of recovering non-traffic sensitive costs.
- The deaveraging of LEC rates to the extent permitted by law.
- The allowance of LEC rate re-balancing and greater LEC pricing flexibility.
- Capital recovery of under-depreciated LEC plant put into service under the regulatory social contract.
- The restructure of interstate local switching rates.
- The restructure of the Transport Interconnection Charge.
- The elimination the Enhanced Service Provider Exemption.

The passage of federal legislation, with its mandate that universal service and other support mechanisms be made explicit, equitable, and non-discriminatory, necessarily implicates a wide range of LEC rate restructuring. It is unreasonable to assume that major Commission competitive objectives can be achieved when critical, core, regulated LEC services are subject to explicit and implicit price distortions as the result of regulatory policies. Restructuring rates will take the industry far along the path to an economically sound vision while at the same time affirming the

industry's commitment to universal service.[63]

III. CONCLUSION

Virtually all commenters agree with the premise of the NPRM that the existing system of interconnection and access rates for the various services requiring interconnection is unacceptable in a fully competitive environment. However, the NPRM is founded on factual and legal assumptions that are erroneous and which predate the Telecommunications Act. The Telecommunications Act modifies both the substance and the process of the relationship between the telecommunications carriers. LECs have the legislated obligation and duty to negotiate interconnection under Section 251(c)(2). This includes not only competitive local exchange providers, but also CMRS providers.

As set forth in SBC's Comments, the most appropriate path for the Commission is to withdraw this Docket. The Commission has much on its plate with the implementation of the Telecommunications Act, some of which will impact the subject matter of this Docket. As an alternative, even if the Commission were to conclude erroneously that it has the jurisdiction necessary to mandate the tentative conclusions (a conclusion which SBC believes would be contrary to the law), the Commission could suspend this proceeding until the end of 1996, pending the implementation of the Telecommunications Act and pending negotiations between LECs and CMRS providers under terms of the Telecommunications Act. At the end of 1996, if the Commission believes that the issues debated in this Docket are not moot, then the Commission could analyze the arguments presented in this record and determine what action, if

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[63]CTIA, while supporting bill and keep, also supports the Commission's taking up interconnection and access charge reform in order to accomplish the Commission's overall policy goals. See CTIA Comments at 15.